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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/739,731	12/18/2000	John Zaharychuk	3239P089	5077
8791	7590	06/04/2004	EXAMINER	
BLAKELY SOKOLOFF TAYLOR & ZAFMAN 12400 WILSHIRE BOULEVARD, SEVENTH FLOOR LOS ANGELES, CA 90025			BLOUNT, STEVEN	
			ART UNIT	PAPER NUMBER
			2661	

DATE MAILED: 06/04/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/739,731

Applicant(s)

ZAHARYCHUK ET AL.

Examiner

Steven Blount

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-28 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9-16,19-25 and 28 is/are rejected.
- 7) ☒ Claim(s) 7,8,17,18,26 and 27 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 4 – 6, 9 – 16, and 19 – 25 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,141,686 to Jackowski et al in view of U.S. patent 5,974,457 to Waclawsky et al.

With regard to claim 1, Jackowski et al teaches an access device comprising:

- 1) an analyzer – edge device 14: see col 2, line 60 (it “examine(s) packets and appl(ies) policy rules to determine which packets to accelerate and which to delay”)
- 2) an optimizer – policy server 18, which “sends the policy rules to edge device 13” (col 2, line 65.

The interaction between the analyzer and the optimizer to dynamically respond to changing mixtures of different traffic types is taught in column 2, lines 65+:

“Policy server 18 sends the policy rules to edge device 14. Bandwidth information is sent back from edge device 14 to policy server 18. This bandwidth information might indicate the current bandwidth available to internet 20 or local network 15, or other load statistics such as the kinds of packet appearing. The bandwidth information may be used by policy server 18 to re-prioritize packets passing through edge device 14 by adjusting the policy rules sent to edge device 14. For example, when edge device 14 detects video conferencing packets passing through, policy server 18 can reduce the

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bandwidth allocated to other kinds of packets to reserve additional network bandwidth for videoconferencing packets.”

Jackowski et al does not, however, explicitly teach the access device to comprise a CPU and memory. The examiner believes that it is self-evident that members 14/18 in figure 3 of Jackowski et al are comprised of (or ultimately operate under the influence of) a CPU and memory. However, to satisfy the requirements of 35 U.S.C. 103(a), the examiner has provided Wacławsky et al, which teaches a similar system that operates under the influence of a CPU and memory. See figure 1B-1, members 140 and 170. It would have been obvious to one of ordinary skill in the art at the time of the Invention to have had members 14/18 in Jackowski et al operate through the use of a CPU and memory, in light of the teachings of Wacławsky et al, in order to allow for system to operate in a controlled manner.

With regard to the following claims (hereinafter referred to as “CI”, see the following: CI 4: see the citation of col 2 lines 65+ above; CI 5: policy servers (Jackowski et al) and expert systems (Wacławsky et al) are commonly implemented in databases; CI 6: priority is discussed in col 2 lines 60+ of Jackowski; CI 9: TCP is mentioned in col 6 line 60; CI 10: in col 2, lines 59+, it is stated that “Edge device 14 is able to block or delay packets to and from Internet 20”; in addition to being able to filter messages which occur in a simplex manner, it is noted that having more than one analyzer to perform this function (as having it done in one unit, as in Jackowski et al) is an obvious variation; With regard to claims 11 – 16 and 19, see the rejections above.

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With regard to claims 20 – 25 and 28, see the rejections above, and note that processes such as those described in Jackowski/Waclawsky et al (including the storage of policy statements in Jackowski) are typically implemented in software.


3. Claims 2 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. patent 6,141,686 to Jackowski et al in view of U.S. patent 5,974,457 to Waclawsky et al as applied above, and further in view of U.S. patent 5,627,819 to Dev et al.

With regard to claim 2, Jackowski et al/Waclawsky teach the invention as described above, but do not teach the use of data taps. These are taught in Dev et al. It would have been obvious to one of ordinary skill in the art at the time of the invention to have used data taps to acquire information about the data types in Jackowski/Waclawsky, in light of the teachings of Dev et al, in order to provide an efficient means of data acquisition for the analyzer.

With regard to claim 3, the analyzer (edge device 14) must have a processing unit so that it can operate as described in col 2 lines 60+ of Jackowski et al.

4. Claims 7 – 8, 17 – 18, and 26 – 27 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form to include the limitations of the base claims and any intervening claims.

5. Examiner Steven Blount may be reached at 703-305-0319 between the hours of 9:00 and 5:30 Monday through Friday.

SB

5/18/04


Ajit Patel
Primary Examiner